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APPENDIX A

Pertinent Provisions of Statutes

SECURITIES ACT OF 1933 AS AMENDED

AN ACT

To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

Sec. 2.[1] When used in this title, unless the context otherwise requires—

(1) the term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

* * * * *

[1] 48 Stat. 74, as amended, 15 U. S. C. 77b(1).

Sec. 3. (a)[2] Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

* * * * *

Sec. 3. (a)(8) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or Territory of the United States or the District of Columbia;

* * * * *

Sec. 5. (a)[3] Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; or

(2) to carry or cause to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.

(b) It shall be unlawful for any person, directly or indirectly—

(1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to carry or transmit any prospectus relating to any security with respect to which a registration statement has been filed under this title, unless such prospectus meets the requirements of section 10; or

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[2] 48 Stat. 76; 15 U. S. C. 77c(a)(8).
[3] 48 Stat. 77; as amended; 15 U. S. C., Supp. II, 77e.

(2) to carry or to cause to be carried through the mails or in interstate commerce any such security for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of sub-section (a) of section 10.

(c) It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under section 8.

INVESTMENT COMPANY ACT OF 1940

AN ACT

To provide for the registration and regulation of investment companies and investment advisers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. (a)[4] Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 30 of the Public Utility Holding Company Act of 1935, and facts otherwise disclosed and ascertained, it is hereby found that investment companies are affected with a national public interest in that, among other things—

[4] 54 Stat. 789; U. S. C. 80a-1.

(1) the securities issued by such companies, which constitute a substantial part of all securities publicly offered, are distributed, purchased, paid for, exchanged, transferred, redeemed, and repurchased by use of the mails and means and instrumentalities of interstate commerce, and in the case of the numerous companies which issue redeemable securities this process of distribution and redemption is continuous;

(2) the principal activities of such companies—investing, reinvesting, and trading in securities—are conducted by use of the mails and means and instrumentalities of interstate commerce, including the facilities of national securities exchanges, and constitute a substantial part of all transactions effected in the securities markets of the Nation;

(3) such companies customarily invest and trade in securities issued by, and may dominate and control or otherwise affect the policies and management of, companies engaged in business in interstate commerce;

(4) such companies are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of such savings into the capital markets; and

(5) the activities of such companies, extending over many States, their use of the instrumentalities of interstate commerce and the wide geographic distribution of their security holders, make difficult, if not impossible, effective State regulation of such companies in the interest of investors.

(b) Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission

made pursuant to section 30 of the Public Utility Holding Company Act of 1935, and facts otherwise disclosed and ascertained, it is hereby declared that the national public interest and the interest of investors are adversely affected—

(1) when investors purchase, pay for, exchange, receive dividends upon, vote, refrain from voting, sell, or surrender securities issued by investment companies without adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such companies and their management;

(2) when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders;

(3) when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities;

(4) when the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control, or is inequitably distributed, or when investment companies are managed by irresponsible persons;

(5) when investment companies, in keeping their accounts, in maintaining reserves, and in computing their earnings and the asset value of their outstanding securities, employ unsound or misleading methods, or are not subjected to adequate independent scrutiny;

(6) when investment companies are reorganized, become inactive, or change the character of their business, or when the control or management thereof is transferred, without the consent of their security holders;

(7) when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities; or

(8) when investment companies operate without adequate assets or reserves.

It is hereby declared that the policy and purposes of this title, in accordance with which the provisions of this title shall be interpreted, are to mitigate and, so far as is feasible, to eliminate the conditions enumerated in this section which adversely affect the national public interest and the interest of investors.

* * * * *

Sec. 2. (a)(17)[5] "Insurance Company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or

[5] 54 Stat. 793; U. S. C. 80a-2(a)(17).

any liquidating agent for such a company, in his capacity as such.

* * * * *

Sec. 2 (a)(21)[6] "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

* * * * *

Sec. 3. (a)[7] When used in this title, "investment company" means any issuer which—

(1) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(2) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

* * * * *

Sec. 3. (c)[8] Notwithstanding subsections (a) and (b), none of the following persons is an investment company within the meaning of this title:

(3) Any bank or insurance company * * *

* * * * *

[6] 54 Stat. 793; 15 U. S. C. 80a-2(a)(21).
[7] 54 Stat. 797; 15 U. S. C. 80a-3(a).
[8] 54 Stat. 798; 15 U. S. C. 80a-3(c).

Sec. 7. (a)[9] No investment company organized or otherwise created under the laws of the United States or of a State and having a board of directors, unless registered under section 8, shall directly or indirectly—

(1) offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offer for sale, sell, or deliver after sale any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any means or instrumentality of interstate commerce;

(2) purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person;

(3) control any investment company which does any of the acts enumerated in paragraphs (1) and (2);

(4) engage in any business in interstate commerce; or

(5) control any company which is engaged in any business in interstate commerce.

* * * * *

Sec. 8. (a)[10] Any investment company organized or otherwise created under the laws of the United States or of a State may register for the purposes of this title by filing with the Commission a notification of registration, in such

[9] 54 Stat. 802; 15 U. S. C. 80a-7(a).
[10] 54 Stat. 803; 15 U. S. C. 80a-8.

form as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An investment company shall be deemed to be registered upon receipt by the Commission of such notification of registration.

* * * * *

Sec. 27. (a)[11] It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate if—

(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

(2) more than one-half of any of the first twelve monthly payments thereon, or their equivalent, is deducted for sales load;

* * * * *

McCARRAN-FERGUSON ACT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2. (a)[12] The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State

[11] 54 Stat. 829; 15 U. S. C. 80a-27(a)(1) and 15 U. S. C. 80a-27(a)(2).
[12] 59 Stat. 33, as amended; 15 U. S. C. §§ 1011-1015.

for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided,* That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Sec. 3. (a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, and the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

Sec. 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

Sec. 5. As used in this Act, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, Guam, and the District of Columbia.

APPENDIX B

Legislation Which Would Have Authorized Sale of Variable Annuities to Public

State	*Year*	*Bill*	*Disposition*
Connecticut	1957	House 1427—to incorporate the Equity Life Insurance Company.	Joint Hearing March 21, 1957. Referred by House Joint Resolution 170 to Legislative Council for study.
Maryland	1955	House 597—to incorporate the Variable Life Income Corporation of Maryland.	No action.
		House 730—to provide for the establishment and operation by Life Insurance Corporations of a variable contract account, etc.	Passed House. Died in Senate Committee.
Massachusetts	1956	House 1560—to authorize life insurance companies to establish variable contract accounts, etc.	Joint Hearing February 6, 1956. No transcript was made. Referred to Special Commission for study by House 2716. Special Commission held public hearings on April 30 and May 1, 1957 to consider House 1560. No transcript of these hearings was made but the Special Commission issued its report covering these hearings on December 2, 1957 as Massachusetts Senate Document 556 of 1958. In this report the Commission recommended further study, looking toward affirmative legislation authorizing the issuance of annuities based upon some portion of equity investment. The Special Commission held another public hearing on May 28, 1958 to discuss, among other things, variable annuities. Speakers were requested to confine their remarks to developments on the subject since the hearing approximately one year before. No transcript was made. The Special Commission issued its report dated July, 1958 as Senate Document 815. The Special Commission reported, without recommendation, a variable annuity bill as Appendix B to its report (S. 815).

State	Year	Bill	Disposition
	1958	Senate 815 App. B—to authorize life insurance companies to establish variable annuity accounts.	Referred to Special Commission for study by Senate 842. This bill was the subject of a public hearing by the Massachusetts Joint Insurance Committee on September 29, 1958. No transcript of this hearing is available.
New Hampshire	1955	Senate 69—to authorize life insurance companies to establish variable contract accounts.	Killed in Senate on March 24, 1955 after hearing before the Senate Committee on Banks and Insurance.
New Jersey	1955	Assembly 305, 306, 307.	Public hearing before the Assembly Committee on Business Affairs May 13, 1955. Transcript available. Died in Assembly Committee.
	1956	Assembly 450, 451, 452.	Public hearing before the Senate Committee on Business Affairs June 22, 1956. Transcript available. Passed Assembly; died in Senate Committee.
	1957	Assembly 11, 12, 13.	Passed Assembly; died in Senate Committee.
	1958	Assembly 330, 331, 332.	Public hearing on May 2, 1958 before the Assembly Committee on Business Affairs. Transcript available. Passed Assembly; in Senate Committee.
New York	1954	Assembly 1323 (Senate 2681)—to incorporate Variable Annuity Corporation of America.	Passed both houses. Vetoed by Governor Dewey.
	1955	Senate 1352 (Assembly 1657)—to incorporate Variable Life Income Corporation of America.	Passed in Assembly. Bill died in Senate Committee.
	1957	Assembly 4044—to incorporate Variable Life Income Corporation of America.	Died in Assembly Committee.
Texas	1955	Senate 332 (House 737)—providing for the formation of corporations for the purpose of issuing variable annuity contracts.	Died in Committee.

NOTE: The table appearing above summarizes only those bills which would have authorized life insurance companies, or new companies known as life insurance companies, to sell "variable annuities" to the public. It does not include pension plans, which are not insurance, and do not and could not qualify under general insurance laws, such as:

1. The College Retirement Equities Fund (CREF), sold only to college professors. By special legislation CREF was authorized to do business by the State of New York subject to regulation and control of its Insurance Commissioner under four provisions of the State's general insurance laws (An Act to Incorporate College Retirement Equities Fund for the benefit of the teaching profession, N. Y. Laws 1952, C. 124); or
2. Three bills passed by the Wisconsin Legislature in 1957 which incorporated the "variable annuity" principle into the retirement systems for state employees, state teachers and the teachers of Milwaukee on much the same basis as CREF, Wisconsin Laws 1957, Chs. 322, 381, 423; or
3. Two bills introduced in the Massachusetts legislature (S. 341 and S. 815 (both of 1958)) which are essentially "variable annuity" bills but limited to group business.